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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,372	12/28/2004	Yasushi Shioya	264048US0PCT	8910

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EXAMINER	
KELLY, YOLANDA LYNNETTE	

ART UNIT	PAPER NUMBER
4174	

NOTIFICATION DATE	DELIVERY MODE
10/31/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/518,372	SHIOYA ET AL.	
	Examiner	Art Unit	
	Y. Lynnette Kelly –	4174	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 December 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *28 Dec. 2004 and 23 Dec. 2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 4-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Okawa et al. US 2002/0022062.

Regarding claims 1, 4, 5 and 7, Okawa discloses an extract of coffee beans used to prevent hypertension. The beans used for the extraction can be raw, decaffeinated or roasted and the remedy may be in the form of a powder, beverage, tablet or candy. [0011]; Examples 3, 4, 7 and 9.

In regard to Applicants (a), the coffee bean extract contains from 0.3 to 3.6% chlorogenic acid, which comprises isochlorogenic acid. *Id.*; [0014]-[0015]. In [0049] of the current Application, "Flavor Holder" produced by T. Hasegawa Co., Ltd. is used as the coffee bean extract in the preferred embodiment. In Table 1, Example 5, Applicants contend that "Flavor Holder" has a 1/7 ratio of isochlorogenic acid. Okawa uses the same coffee bean extract produced by T. Hasegawa in his embodiments. Okawa Examples 3-11. Therefore the chlorogenic acid family used by Okawa also has an isochlorogenic acid weight ratio from 1/20 to 1/3 of the chlorogenic acid mixture.

In regard to Applicants (b), Okawa's invention may further contain 0.33 to 4% of a hydroxycarboxylic acid, such as ascorbic acid or citric acid, which as a result may be

5 to 30 times the weight of ingredient (a). Examples 3, 4, 7 and 9. Okawa further adds between 0.1% to a sufficient amount of flavor that may result in a 0.25 to 15% by weight addition of flavor. *Id.*

In regard to Applicants (c), Okawa teaches compositions wherein water is added just to dissolve ingredients in each other (Example 6), to compositions wherein ingredients are added to water in order to prepare a resultant 5 litter solution (Example 7). Therefore Okawa teaches the addition of from 30 to 99.7% of water by weight.

In regard to claim 2, Okawa teaches a Medical Vitamin Drink in Example 9. Okawa adjusts the solution containing the chlorogenic acid family hydroxycarboxylic acid mixture to a preferred pH of 3.

In regard to claim 6, Okawa teaches a Soft Drink in Example 7. The chlorogenic acid family hydroxycarboxylic acid mixture is made into a 5-liter solution and packaged into 100 ml soft drink bottles.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okawa as applied to claim 1 above.

As stated above, Okawa teaches a flavored beverage containing water and a chlorogenic acid family hydroxycarboxylic acid mixture. Not only does Okawa's invention rely upon the same coffee bean extract ("Flavor Holder") used by Applicants, Okawa's invention also employs the use of fructose/glucose to sweeten the Soft Drink (Okawa Example 7); however, Okawa does not state the inventions sugar content in Brix.

It is well known in the art that Brix is used as a measurement for the approximate amount of sugar in a substance which is a result effective variable. It is also well known within the beverage industry that the proper amount of sugar is dependent upon the users taste. Therefore, taken as a whole, it would have been obvious for one of ordinary skill in the art at the time this invention was made to test and maintain Okawa's recipes at a sugar content of 0.01 to 20 in Brix.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Suzuki et. al EP 1186297 A2.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Y. Lynnette Kelly whose telephone number is 571-270-

3472. The examiner can normally be reached on Monday - Friday EST (First Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Tarazano can be reached on 571-272-1550. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Y. Lynnette Kelly
Examiner
Art Unit 4174

D. LAWRENCE TARAZANO
PRIMARY EXAMINER